

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On March 8, 2021 appellant, then a 48-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 2, 2021 he contracted COVID-19 after being in contact with a COVID-positive individual while in the performance of duty. On the reverse side of the claim form, the employing establishment did not indicate whether appellant stopped work.

In a January 5, 2021 letter, Jennifer Harp, a nurse practitioner, noted that appellant was unable to work due to continued effects of COVID-19.

In a January 13, 2021 letter, Ms. Harp continued to hold appellant off work due to complications from COVID-19. On January 19, 2021 she indicated that he could return to work without restrictions on January 26, 2021.

In letters dated March 12 and April 7, 2021, the employing establishment controverted appellant's claim, noting that his position did not require in-person contact with the public.

In a development letter dated April 20, 2021, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical evidence needed and afforded him 30 days to submit the necessary evidence.

Appellant submitted a polymerase chain reaction laboratory test result, collected on December 19, 2020, which revealed that he tested positive for COVID-19.

In December 29, 2020 discharge instructions, Dr. Bradley Messner, Board-certified in emergency medicine, confirmed that appellant tested positive for COVID-19.

In an undated statement, appellant clarified that he contracted COVID-19 in mid-December 2020 at work. He indicated that he was working long shifts and did not go anywhere else in the community. Appellant noted that he began using personal leave on January 2, 2021.

By decision dated May 12, 2021, OWCP accepted appellant's claim for COVID-19. By separate decision of even date, it denied his claim for COP, finding that he had not reported his injury on an OWCP-approved form within 30 days of the accepted employment injury. OWCP noted that the denial of COP did not preclude appellant from filing a claim for disability due to the effects of the accepted employment injury.

LEGAL PRECEDENT

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of

this title.³ This latter section provides that written notice of injury shall be given within 30 days.⁴ The context of section 8122 makes clear that this means within 30 days of the injury.⁵

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁶

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish entitlement to COP.

Appellant filed his Form CA-1 on March 8, 2021. By decision dated May 12 2021, OWCP denied his request for COP, as his claim was not filed within 30 days of the accepted employment injury. It noted that the denial of COP did not preclude appellant from filing a claim for disability due to the effects of the accepted employment injury.

Because appellant filed his Form CA-1 on March 8, 2021, the Board finds that it was not filed within 30 days of the accepted January 2, 2021 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA.⁷ Accordingly, appellant is not entitled to COP.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish entitlement to COP.

³ *Supra* note 1 at § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985)."

⁶ 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board